

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DATATREASURY CORP.,
Plaintiff,

vs.

SMALL VALUE PAYMENTS
COMPANY
Defendant.

§
§
§
§
§
§
§
§

No. 2:04cv85
Hon. David J. Folsom

JOINT CONFERENCE REPORT

(1) A brief factual and legal synopsis of the case.

(a) Plaintiff's position.

This is a patent infringement case. The patents-in-suit are U.S. Patent No. 5,910,988 ("the '988 Patent") and U.S. Patent No. 6,032,137 ("the '137 Patent"). As stated in their Abstracts, the patents-in-suit pertain to systems for remote data acquisition and centralized processing and storage. The abstracts state that according to a preferred embodiment of the inventions, the systems retrieve transaction data at one or more remote locations, encrypt the data, transmit the encrypted data to a central location, transform the data to a usable form, perform identification verification using signature data or other biometric data, generate informative reports from the data, and transmit the informative reports to the remote locations.

Plaintiff DataTreasury Corporation is the owner of the '988 and '137 Patents. Plaintiff claims that Small Value Payments Company, ("SVPCo") directly infringes, contributorily infringes and induces infringement on the '988 and '137 Patents. Plaintiff claims that the Defendant's infringements occur through its electronic check clearing system.

(b) Defendant's position.

Defendant is the Clearing House Payments Company L.L.C., which is the successor in interest to The Small Value Payments Company ("SVPCo"). Plaintiff, DataTreasury Corporation, has accused SVPCo of directly infringing, contributing to the infringement, and inducing infringement of the '988 and '137 patents through its alleged check clearing services.

Defendant maintains that the '988 and '137 patents are invalid under 35 U.S.C. §§ 102, 103, and 112 and are unenforceable due to inequitable conduct during prosecution of the patents.

Further, DataTreasury's enforcement of the '988 and '137 patents against SVPCo and others knowing that the patents are not infringed, are invalid, and unenforceable constitutes patent misuse and unfair competition.

(2) The date the 26(f) conference was held, the names of those persons who were in attendance, and the parties they represented:

In accordance with the Court's Order Scheduling counsel for Plaintiff DataTreasury Corporation and counsel for Defendant SVPco conducted a conference pursuant to Federal Rule of Civil Procedure 26(f) on December 1, 2004, 2004. The following attorneys were present on behalf of Plaintiff: Neil Smith. The following attorneys were present on behalf of Defendant: Preston McGee, and James Carter.

(3) A list of any cases that are related to this case and that are pending in any state or federal court with the case numbers and court;

1. DataTreasury v. JP Morgan Chase, Eastern District of Texas, Texarkana; Cause No. 5:02-CV-124
2. DataTreasury v. Ingenico and Ingenico, SA; Eastern District of Texas, Texarkana; Cause No. 5:02-CV-095
3. DataTreasury v. First Data; Eastern District of Texas, Texarkana; Cause No. 5:03-CV-39
4. DataTreasury v. Viewpointe Archive Systems, Bank One, Electronic Data Systems, and Zions Bankcorporation; Northern District of Texas, Dallas; Cause No. 3:02-CV-2643
5. DataTreasury v. Mag-Tek; Eastern District of Texas, Marshall; 2-03CV-459

(4) An agreed discovery / case management plan, if an agreement can be reached.

Plaintiff's proposed Case Management Order is attached. Currently, the parties are attempting to agree upon a case management order. However, no agreement has been reached at this time.

(5) A suggested date for the final pre-trial conference at which time the trial will be scheduled.

October 3, 2005

(6) The expected length of trial.

Two weeks. One week per side.

(7) Whether the parties jointly agree to trial before a magistrate judge.

No.

- (8) **Whether a jury demand has been made.**

Yes.

- (9) **Whether the parties request a conference with the court pursuant to Fed. R. Civ. P. 16(b) before the entry of the Scheduling Order.**

Yes.

Respectfully submitted,

_____/s/_____
Ed Hohn
Texas Bar No. 09813240
Neil Smith
Texas Bar No. 00797450
NIX PATTERSON & ROACH, L.L.P.
205 Linda Drive
Daingerfield, Texas 75638
Tel. (903)645-7333; Fax (903)645-4415
edhohn@nixlawfirm.com
dsmith@nixlawfirm.com

Rod A. Cooper
Texas Bar No. 90001628
THE COOPER LAW FIRM
545 E. John Carpenter Freeway, Suite 1460
Irving, Texas 75062
Tel. (972)831-1188; Fax (972)692-5445
rcooper@cooperiplaw.com

Anthony Bruster
Texas Bar No. 24036280
NIX PATTERSON & ROACH, L.L.P.
2900 St. Michael Drive, 5th floor
Texarkana, Texas
Tel. (903)233-3999; Fax (903)
abruster@nixlawfirm.com

Joe Kendall
Texas Bar No. 11260700

Buddy Reece
Texas Bar No. 16672990
PROVOST HUMPHREY, L.L.P.
3232 McKinney Avenue, Suite 700
Dallas, Texas 75204
Tel. (214)774-3000; Fax (214) 744-3015
jkendall@provosthumphrey.com

ERIC ALBRITTON
Texas Bar No. 00790215
ALBRITTON LAW FIRM
109 West Tyler Street
Longview, Texas 75601
Tel. (903)757-8449; Fax: 903.758.6397
eric@albrittonlawfirm.com

JOHNNY WARD
Texas Bar No. 00794818
THE LAW OFFICE OF T. JOHN WARD, JR.
P.O. 1231
Longview, Texas 75601
Tel. (903)757-6400; Fax: (903)758-7397
jw@JWFirm.com

/s/ Preston W. McGee

Preston W. McGee
Texas State Bar No. 13620600
Flowers Davis, P.L.L.C.
1021 ESE Loop 323, Suite 200
Tyler, Texas 75701
Tel: (903) 534-8063
Fax: (903) 534-1650
pmcgee@tyler.net

Of Counsel:
James H. Carter
James T. Williams
Heather E. Abelson
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
Tel: (212) 558-4000
Fax: (212) 558-3588

carterj@sullcrom.com
williamsj@sullcrom.com
abelsonh@sullcrom.com

Lawrence F. Scinto
Ronald A. Clayton
FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
Tel: (212) 218-2100
Fax: (212) 218-2200
lscinto@fchs.com
rclayton@fchs.com

*Attorneys for The Clearing House Payments
Company*